

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEORGE E. PIERCE,	§	
	§	No. 705, 2010
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware, in and for New
v.	§	Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1004004614
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 13, 2011

Decided: April 29, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 29th day of April 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. George E. Pierce (“Pierce”), the defendant-below, appeals from a Superior Court order denying his motion to suppress evidence, and from his subsequent convictions for Possession of a Narcotic Schedule II Controlled Substance,¹ Possession of Drug Paraphernalia,² and Failure to Signal.³ On appeal,

¹ 16 *Del. C.* § 4753.

² 16 *Del. C.* § 4771.

³ 21 *Del. C.* § 4155(a).

Pierce claims that the trial court erroneously denied his suppression motion. We find no error and affirm.

2. At around 2:00 a.m. on April 7, 2010, Middletown Police Officer Joshua Stafford was on routine patrol when he observed a silver Buick make a right-hand turn from Merrimac Avenue onto southbound Route 301 without using its turn signal.⁴ Intending to make a “traffic stop,” Stafford began following the Buick. Before pulling the vehicle over, Stafford called for additional police assistance and conducted a registration check of the Buick.⁵ Officer Stafford stopped the Buick, and approached it and saw Pierce in the driver’s seat, accompanied by a passenger who was later identified as Ronnell Young. Stafford asked Pierce for his license, registration, and proof of insurance. While doing so, Stafford noticed that Pierce and Young were both stuttering, looked extremely nervous, and kept “looking away . . . looking down at the floor.” Pierce’s answers to routine questions also raised Officer Stafford’s suspicions. Specifically, Pierce gave inconsistent answers when questioned about where he was coming from and where he was headed.

⁴ Merrimac Avenue is a two-lane road that also provides access to the entrance of a shopping center containing a 24-hour Walmart Supercenter. Route 301 is also known as “Middletown Warrick Road” at that intersection.

⁵ Officer Stafford testified that once he has decided to stop a vehicle, he runs a registration check, for officer safety, before physically approaching the vehicle. Here, the registration check revealed that the Buick was registered to Pierce.

3. Continuing with his routine questioning, Officer Stafford then asked whether there was any contraband (*i.e.*, weapons or illegal substances) in the car. Pierce and Young both denied that there was, and invited Stafford to search the vehicle. As Pierce and Young exited the Buick to allow Stafford to conduct the search, Stafford saw Pierce hide something underneath the driver's side floor mat. After lifting up the floor mat, Stafford found a silver smoking pipe and several off-white rocks that field-tested positive for crack cocaine. The other police officers who arrived to assist Stafford also saw Young attempting to swallow several "white baggies."

4. Pierce was arrested, and thereafter indicted by a grand jury for Failure to Signal,⁶ Possession of a Narcotic Schedule II Controlled Substance,⁷ Possession of Drug Paraphernalia,⁸ and Maintaining a Vehicle for Keeping or Delivering Controlled Substances.⁹ Pierce then moved to suppress evidence on two separate grounds. First, the traffic stop was a pretext for conducting a drug investigation, because Officer Stafford knew that Pierce had been previously involved with drugs. Second, Stafford's subsequent questions (asking Pierce where he was

⁶ 21 Del. C. § 4155(a).

⁷ 16 Del. C. § 4753.

⁸ 16 Del. C. § 4771.

⁹ 16 Del. C. § 4755(a)(5). The State later entered a *nolle prosequi* on the Maintaining a Vehicle charge.

headed/coming from, whether there was any contraband in the car) constituted a second (illegal) investigative detention not supported by a reasonable and articulable suspicion of criminal activity, because those questions were unrelated to the nature of the initial traffic stop. Pierce argued that any consent to search the vehicle was tainted by that second “illegal detention.”

5. At a suppression hearing held on September 24, 2010, the Superior Court heard testimony from Officer Stafford, and issued an oral ruling denying Pierce’s motion. The trial judge first concluded that Stafford had stopped Pierce because Pierce failed to signal while turning. The trial judge next found that Stafford’s questions were routine questions that related to the initial traffic stop. Accordingly, there was no second “illegal detention” that tainted Pierce’s consent to search the car.

6. After a stipulated bench trial, Pierce was convicted of the charges and sentenced to two years at Level V incarceration, suspended for two years at Level II probation. This appeal followed.

7. On appeal, Pierce claims that the trial court erroneously denied his suppression motion, for two reasons. First, he claims that the police lacked a reasonable and articulable suspicion of criminal activity sufficient to justify a second investigative detention. Second, Pierce argues that the police used the minor traffic violation as a pretext to conduct an illegal drug investigation. These

two arguments are premised on the same legal theory: that Officer Stafford was not authorized to question him about his destination, origination, and purpose, or whether there was any contraband in the car.

8. This Court generally reviews a trial court's denial of a motion to suppress evidence for abuse of discretion.¹⁰ To the extent that the claim is for an alleged violation of a constitutional right, we review *de novo*.¹¹ We will not, however, disturb a trial court's factual findings absent clear error.¹²

9. Pierce's claims lack merit. Pierce does not dispute the validity of the initial traffic stop for failure to signal. Once the car was validly stopped, Officer Stafford was authorized, under 11 *Del. C.* § 1902, to question Pierce about his "name, address, business abroad and destination."¹³ The trial judge found that Officer Stafford's question about whether Pierce had "any weapons, any illegal substances in the vehicle" was a question routinely asked as part of the initial traffic stop. Pierce has not demonstrated why that factual finding is erroneous. Stafford's questions, therefore, did not constitute a second investigative detention or a pretext for an illegal drug investigation, because those questions were either

¹⁰ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008).

¹¹ *Id.* at 1284-85.

¹² *Id.* at 1285.

¹³ 11 *Del. C.* § 1902(a).

authorized by statute or were part of routine police questioning.¹⁴ Accordingly, Pierce's volunteered consent to search the vehicle was not impermissibly "tainted." For these reasons, the trial court properly denied Pierce's suppression motion.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁴ Even if Officer Stafford's contraband question was not routine, Stafford had specific facts that independently established a reasonable and articulable suspicion sufficient to justify the additional questioning. Those facts were: (1) Stafford was aware that Pierce had been previously involved with drugs; (2) Pierce gave inconsistent answers regarding his destination and origination; (3) both Pierce and Young exhibited stuttered speech and nervous behavior; and (4) both Pierce and Young refused to make eye contact with Stafford. *See* 11 *Del. C.* § 1902(b) (noting that insufficient answers warrant further questioning); *Monroe v. State*, 913 A.2d 570 (Table), 2006 WL 3482182, at *2 (Del. 2006) (noting that an officer's knowledge of a defendant's prior criminal history, combined with the defendant's nervous behavior and refusal to answer a police question, was sufficient to establish a reasonable and articulable suspicion of wrongdoing).